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Lise King

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LISE KING

Appeal 2008-1812
Application 10/825,272
Technology Center 3600

Decided: June 30, 2008

Before DONALD E. ADAMS, LORA M. GREEN, and
FRANCISCO C. PRATS, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-3, 5-11, and 13-22. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1, 20, and 21 are representative of the claims on appeal, and read as follows:

1. A pet stroller comprising:
 - a) a collapsible frame comprising;
 - i) a bottom section,
 - ii) a plurality of rails comprising a first set of substantially vertical rear rails and a second set of substantially forward rails coupled to said bottom section at a front portion of the frame and coupled to an upper portion of said substantially vertical rails at a rear portion of the frame,
 - iii) a handle disposed on said frame,
 - iv) a plurality of wheels rotatably secured to said frame; and
 - b) an enclosure comprising;
 - i) an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure, said enclosure frame comprising a plurality of semicircular hoop portions forming a rounded upper surface and a plurality of crossbars;
 - ii) a flexible netting material secured to said enclosure frame and covering at least approximately one half of a length of said outer section of said enclosure;
 - iii) a padded material covering the bottom section of said enclosure;
 - iv) at least one door releasably secured to at least one of said plurality of end sections of said enclosure; and
 - v) a handle mounted to said enclosure for carrying said enclosure;
 - vi) at least one fabric cover covering approximately one half of the length of said enclosure and wherein said forward rails are angled so that when said portable collapsible enclosure is placed on said frame, said forward rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.
20. A pet stroller comprising:
 - a) a collapsible frame comprising;
 - i) a bottom section,
 - ii) a handle disposed on said frame,
 - iii) a plurality of wheels rotatably secured to said frame;

- iv) a plurality of rails coupled to said bottom section at a front portion of the frame and coupled to said handle at a rear portion of the frame; and
 - b) a portable collapsible enclosure comprising;
 - i) an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure, said enclosure frame comprising a plurality of semicircular hoop portions forming a rounded upper surface and a plurality of crossbars;
 - ii) a flexible netting material secured to said enclosure frame and substantially covering said outer section of said enclosure;
 - iii) at least one door releasably secured to at least one of said plurality of end sections of said enclosure;
 - iv) at least one handle mounted to said enclosure for carrying said enclosure said handle extending lengthwise on said enclosure; and
 - v) a fabric cover covering approximately one half of the length of said enclosure said fabric cover being coupled to at least two of the frame components;:
- wherein said rails are angled up so that when said portable collapsible enclosure is placed on said frame, said rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

21. A pet stroller comprising:
- a) a collapsible frame comprising;
 - i) a bottom section,
 - ii) a handle disposed on said frame,
 - iii) a plurality of wheels rotatably secured to said frame;
 - iv) a plurality of rails comprising a set of substantially forward rails coupled to said bottom section at a front portion of the frame and coupled to said handle at a rear portion of the frame; and
 - b) an enclosure comprising;
 - i) an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure, said enclosure frame comprising a plurality

of semicircular hoop portions forming a rounded upper surface and a plurality of crossbars;

- ii) a flexible netting material secured to said enclosure frame and covering said outer section of said enclosure;
- iii) at least one door releasably secured to at least one of said plurality of end sections of said enclosure;
- v) at least one handle mounted to said enclosure for carrying said enclosure; and
- vi) a fabric cover extending over at least one of the semicircular hoop portions of the frame:

wherein said rails are angled up so that when said portable collapsible enclosure is placed on said frame, said rails extend from a first position adjacent to a bottom region of said portable collapsible enclosure to a second position above said portable collapsible enclosure, in a manner to prevent said portable collapsible enclosure from falling off of said frame when said frame and enclosure are in use.

The Examiner relies on the following references:

Halpin	US 2,538,778	Jan. 23, 1951
Leader	US 5,113,793	May 19, 1992
Zarola	US 5,335,618	Aug. 9, 1994
Baumsteiger	US 6,374,775 B1	Apr. 23, 2002
Ludolph	US 6,584,937 B1	Jul. 1, 2003

We affirm.

DISCUSSION

Claims 1-3, 5-11, 13-22 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Baumsteiger, Zarola, and Halpin.

Baumsteiger is cited for teaching:

a collapsible pet stroller comprising: a) a frame comprising; i) a bottom section (Baumsteiger bottom section Fig. 3 #28), a plurality of rails comprising a first set of substantially vertical rear rails (Baumsteiger Fig. 7 #22) and a second set of substantially forward rails (Baumsteiger Fig. 3 #19 and 18)

coupled to said bottom section at a front portion of the frame (Baumsteiger Fig. 1 and 3 at point #30) and coupled to said substantially vertical rails; a handle (Baumsteiger #16) disposed on said frame, iv) a plurality of wheels (Baumsteiger #34) rotatably secured to said frame; and enclosure (Baumsteiger #12); and wherein the forward rails are angled so that when the portable collapsible enclosure is placed on the frame, the forward rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and enclosure are in use (Baumsteiger Fig. 1).

(Ans. 3-4.) The Examiner notes that Baumsteiger “is silent on the structural configuration of the enclosure.” (*Id.* at 4.)

The Examiner relies on Figure 2 of Zarola for teaching an enclosure for a pet comprising an enclosure frame forming a bottom section, an outer section, and a plurality of end sections, wherein the enclosure frame comprises a plurality of semicircular hoop portions, forming a rounded upper surface, and also comprises a plurality of crossbars (Ans. 4). Zarola is also cited for teaching a flexible netting material and fabric cover secured to said enclosure frames, as well as for teaching that the enclosure has at least one door, as well as a handle (*id.*).

According to the Examiner, “Baumsteiger teaches an animal enclosure and stroller for ease of traveling with an animal and that the stroller is designed to carry a ‘Conventional’ pet kennel (Baumsteiger Col. 4 line 12-15) and Zarola teaches an alternate ‘Conventional’ pet kennel for traveling with an animal (Zarola Col. 5 line 32-45).” (Ans. 4-5.) Thus, the Examiner concludes, it “would have been obvious to one of ordinary skill in the art to modify the teachings of Baumsteiger with the teachings of Zarola

at the time of the invention since the modification is merely the selection of a known alternate equivalent ‘conventional’ pet kennel selected for the feature of being expandable when desired.” (*Id.* at 5.)

The Examiner further relies on Halpin to teach a pad as required by the independent claims, as Halpin teaches a semicircular padded material covering the bottom of a traveling enclosure (Ans. 5). The Examiner notes that “Baumsteiger as modified by Zarola makes mention of a pad (Baumsteiger Col. 4 line 28), but is silent on a padded material covering the bottom section of said enclosure.” (*Id.*) The Examiner concludes further that it “would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger as modified by Zarola with the teachings of Halpin at the time of the invention for the added soft comfort for the animal, or to incorporate a moisture absorbing material which can soak up sweat or urine.” (*Id.*)

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) secondary considerations of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The Supreme Court has recently emphasized that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Moreover, an “[e]xpress suggestion to substitute one equivalent for another need not be present to render such substitution obvious.” *In re Fout*, 675 F.2d 297, 301 (CCPA

1982). We conclude that the Examiner has set forth a prima facie case of obviousness as to the rejected claims, and so turn to Appellant's arguments and evidence in rebuttal.

Appellant asserts that the references do not teach all of the claim limitations, and in particular, "none of the references teach a portable collapsible enclosure that can be disposed on a frame, wherein the enclosure has a plurality of hoop portions, and a flexible netting material covering at least approximately one half of the length of the enclosure." (App. Br. 10-11.)

Appellant argues further that the enclosure of Zarola "differs entirely from the enclosure as claimed in claim 1," as Zarola "relates primarily to a portable enclosure or house unit . . . and an extension or run." (App. Br. 9-10.) Moreover, Appellant asserts, the animal house unit of Zarola has ends that are preferably of canvas material, and thus "does not disclose a portable enclosure having a flexible netting material 'covering at least approximately one half of a length of said outer section of said enclosure' as claimed in claim 1." (App. Br. 11.) According to Appellant, the Examiner, instead of "distinguishing between the house unit . . . and the separate run unit . . . , the Examiner combines the features of these two different units to arrive at a combination unit which is not even disclosed in Zarola." (*Id.*)

Obviousness is determined in view of the sum of all of the relevant teachings in the art, not isolated teachings in the art. *In re Kuderna*, 426 F.2d 385, 389 (CCPA 1970); *see also In re Shuman*, 361 F.2d 1008, 1012 (CCPA 1966). Appellant, in arguing that "none of the references teach a portable collapsible enclosure that can be disposed on a frame, wherein the enclosure has a plurality of hoop portions, and a flexible netting material

covering at least approximately one half of the length of the enclosure” (App. Br. 11), is focusing on the references in isolation is and not considering the teachings of the references in view of the prior art as a whole.

Figure 1 of Baumsteiger is reproduced below:

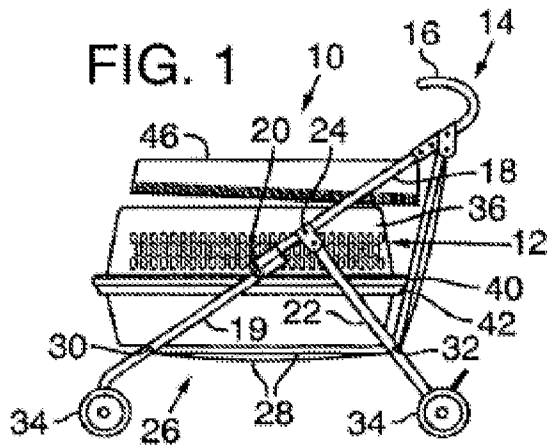


Figure 1 of Baumsteiger is drawn to a kennel stroller, wherein a vented, closed “conventional” kennel is shown (Baumsteiger, col. 1, ll. 62-63). As noted by the Examiner, and not argued by Appellant, Baumsteiger teaches all of the requirements of the claimed stroller. The only difference between the claimed stroller and the stroller of Baumsteiger is the kennel that is used.

The Examiner relies on Zarola to make up the deficiency as to the kennel.
Figure 1 of Zarola is reproduced below:

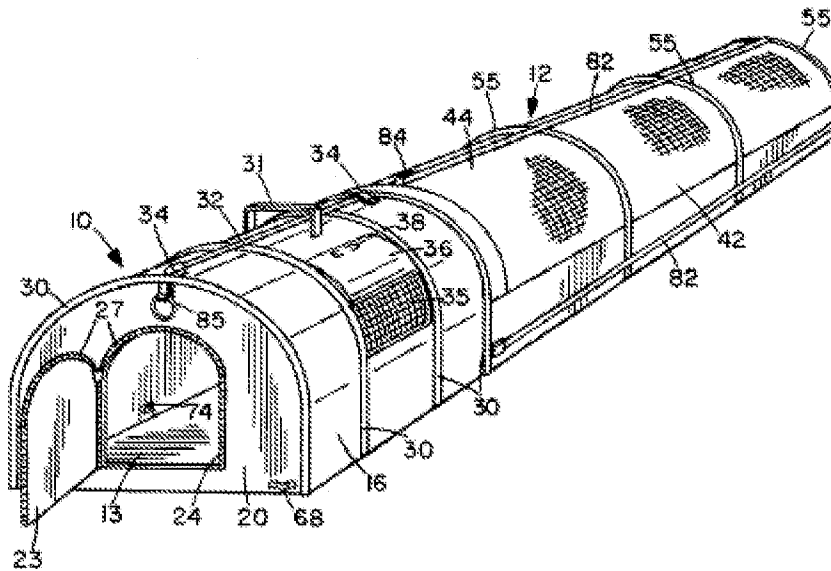


Figure 1 of Zarola is “a perspective view of the animal house and run according to a preferred embodiment of [Zarola] in erected position.” (Zarola, col. 2, ll. 62-64.) Reference 10 refers to the animal house, and reference 12 refers to the run (Zarola, col. 1, ll. 12-15), wherein the house is preferable covered with canvas (Zarola, col. 3, ll. 30-32) and the run is covered primarily with a pliable mesh material (netting) (Zarola, col. 4, ll. 36-38). Zarola teaches the use of fabric and netting covering the enclosure frame (col. 3, ll. 30-32; col. 4, ll. 10-19; col. 4, ll. 36-38), and also teaches that the animal house is collapsible (col. 2, ll. 47-54). Zarola teaches all of the limitations of the enclosure except for the ratio of netting to fabric covering the enclosure, and also does not specifically teach the padded material covering the bottom section of said enclosure.

As to the padded material, Baumsteiger does teach the use of a pad (col. 4, l. 28), and Halpin provides further evidence that the use of a pad is well known and routine in the art. As to the ratio of netting to fabric covering the enclosure, because Zarola discloses that the walls and roof of the enclosure's run portion 12 are primarily mesh (*see* col. 4, ll. 36-38, *see also* Figure 1), Zarola provides evidence that it was known in the art, and well within the level of ordinary skill, to vary the amount of opaque fabric and open mesh to balance the amount of privacy afforded to the pet to allow the pet to experience more of the outside environment through the use of netting. Thus, we conclude that the ratio of fabric to netting as required by the independent claims 1, 20, and 21 would have been obvious to the ordinary artisan and based on the above desired balance of privacy to exposure to the outside environment. As noted by the *KSR* Court, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” 127 S.Ct. at 1742.

Appellant argues further that there is no motivation to combine the references (App. Br. 12). Appellant asserts that “there is no explicit suggestion contained in Baumsteiger . . . to use the teachings of Zarola or Halpin to arrive at the invention as claimed in claim 1.” (*Id.*) According to Appellant, the kennel disclosed in Baumsteiger is made from a substantially solid material, and while both Zarola and Halpin disclose a housing made of pliable material, neither disclose a housing “made from a flexible netting material ‘covering at least approximately one half of a length of said outer section.’” (*Id.* at 13.) Appellant also argues that the combination provides no expectation of success, as the ordinary artisan would have to modify

Baumsteiger with features not disclosed in Zarola, and then further combine the features with Halpin (*id.* at 14).

As to motivation to combine, the Supreme Court in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007), rejected a rigid application of the teaching-suggestion-motivation test. The Court recognized that it is often necessary to look at the interrelated teaches of multiple references; the effects of demands of the marketplace; and the background knowledge possessed by a person of ordinary skill, “all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed.” *Id.* at 1740-41. Moreover, the “obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, or motivation, or by overemphasis on the importance of published articles and explicit content of issued patents.” *Id.* at 1741. Finally, one “of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 1742.

Here, Baumsteiger teaches a kennel stroller, and Zarola teaches a collapsible pet kennel. Thus, it would have been obvious to use the collapsible pet kennel of Zarola as the kennel used in the pet stroller of Baumsteiger. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 127 S. Ct. at 1739. Although Appellant argues that the combination provides no expectation of success, as the ordinary artisan would have to modify Baumsteiger with features not disclosed in Zarola, and then further combine the features with Halpin, Appellant has presented no evidence that it would have been beyond the skill of the ordinary artisan

to combine the references as set forth by the Examiner to arrive at the claimed invention. Note that arguments of counsel cannot take the place of evidence in the record. *In re Scarbrough*, 500 F.2d 560, 566 (CCPA 1974).

We thus conclude that the Examiner has set forth a prima facie case of obviousness as to claim 1, and as Appellant does not argue claims 2, 3, 5-11, and 13-19 separately from claim 1, those claims stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii). Moreover, as we find that Appellant's evidence of long felt need and commercial success is not sufficient to overcome the prima facie case (see discussion *infra*), the rejection is affirmed as to claims 1-3, 5-11, and 13-19.

As to claim 20, Appellant argues that "none of the references teach a portable collapsible enclosure having: 'a flexible netting material secured to said enclosure frame and substantially covering said outer section of said enclosure.'" (App. Br. 15.) Appellant argues further that it would require an undue amount of experimentation to combine Baumsteiger, Zarola, and Halpin to arrive at the invention of claim 20 (*id.*).

Appellant's argument has been considered, but as noted above, we find that altering the ratio of fabric to netting as required by independent claim 20 would have been well within the skill of the ordinary artisan, and would be based on the desired balance of privacy to exposure to the outside environment. Thus, we affirm the rejection as to claim 20 as well.

As to claim 21, Appellant essentially reiterates the arguments made with respect to the rejection as applied to claims 1 and 20 (App. Br. 16). We thus affirm the rejection as to claim 21 for the reasons set forth above.

Claims 1-3, 5-11, 13-20, and 22 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Baumsteiger, Zarola, and Halpin, as further combined with Ludolph.

As we have already concluded that the combination of Baumsteiger, Zarola, and Halpin renders the subject matter of claims 1-3, 5-11, 13-20, and 22 obvious, we affirm this rejection as well.

Note that we find Ludolph supports our finding with respect to the above rejection that the ratio of fabric to netting required by independent claims 1 and 20 would have been well within the skill of the ordinary artisan, and would be based on the desired balance of privacy to exposure to the outside environment, and thus find it to be cumulative the Baumsteiger, Zarola, and Halpin references.

Claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Leader and Zarola.

Leader is cited for teaching

a pet stroller comprising (Leader Fig. 1): a frame comprising; a bottom section (Leader elements #6), a handle disposed on said frame (Leader #3), a plurality of wheels rotatably secured to said frame (Leader #10 and 8); and an enclosure comprising (Leader #2): at least one door releasably secured to at least one of said plurality of end sections of said enclosure (Leader #17); an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure; wherein the rails are angled (Leader Fig. 1 #12) up so that when the collapsible enclosure is placed on the frame, the rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and enclosure are in use.

(Ans. 9-10.)

The Examiner notes that while Leader teaches placing a removable enclosure on the tray which can be covered with fabric or partly exposed for the viewing pleasure of the animal, Leader “is silent on the enclosure frame comprising a plurality of semicircular hoop portions and a plurality of crossbars; a flexible netting material secured to the enclosure frame outer section of said enclosure; and a handle mounted to said enclosure for carrying said enclosure.” (Ans. 10.) The Examiner relies on Zarola for its teaching of a pet enclosure, concluding that it “would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader with the teachings of Zarola the time of the invention since the modification is merely the selection of an alternate pet traveling enclosure selected for its ability to expand and collapse.” (*Id.*)

As to claim 20, Appellant argues that the claim requires “a flexible netting material secured to said enclosure frame and substantially covering said outer section of said enclosure,” and that neither Leader nor Zarola include that feature (App. Br. 19). Appellant argues further that Claim 20 also requires rails that are used to “prevent said portable collapsible enclosure from falling off said frame when said frame and enclosure are in use,” and that Leader “discloses a support tray 19 that has borders 5 on each side of the carriage 20 to keep the enclosure 15 in place as well as a front holding bar 13 to keep the enclosure from sliding forward.” (App. Br. 20.)

Appellant argues further that the combination of references does not provide a reasonable expectation of success of arriving at the invention of claim 20, and that “there must be great experimentation to arrive at the

housing of the present invention, which provides both a ‘flexible netting material . . . substantially covering said outer section of said enclosure’ and a ‘fabric cover covering approximately one half of the length of said enclosure.’” (App. Br. 21.)

As noted above, Zarola provides evidence that it was known in the art, and well within the level of ordinary skill, to change the amount of opaque fabric and open mesh to balance the amount of privacy afforded to the pet to allowing the pet to experience more of the outside environment through the use of netting. As to the argument that claim 20 requires rails that are used to “prevent said portable collapsible enclosure from falling off said frame when said frame and enclosure are in use,” the Examiner points to Figure 1 of Leader, reference 12 as teaching that requirement, and Appellant has not explained why that finding is incorrect. We also find that the rail of Leader referenced by the Examiner meets that limitation of claim 20. Thus, the rejection is affirmed as to claim 20. As Appellant does not argue dependent claim 20 separately, it falls with claim 20.

As to claim 21, Appellant argues that there is no suggestion or motivation to combine the references (App. Br. 22). Specifically, Appellant argues that Leader “does not suggest combining the stroller with an enclosure that includes semicircular hoop portions and both a flexible netting material and a fabric cover,” and Zarola “does not suggest combining the enclosure with a stroller,” but only “with the attached run section.”

We have addressed this argument above, and do not find it convincing. Thus the rejection as to claim 21 is affirmed.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Leader and Zarola as further combined with Ludolph.

As we have already concluded that the combination of Leader and Zarola renders the subject matter of claims 20 obvious, we affirm this rejection as well.

Appellant further relies on the Declarations of Lise King (the inventor) (Attachment A to the Appeal Brief) and Charles George (a purchaser) (Attachment B to the Appeal Brief) submitted under 37 C.F.R. § 1.132 to establish long-felt need and unexpected results. Appellant has further submitted an award from CatFancy Magazine obtained for the commercial embodiment of the claimed invention (Attachment C to the Appeal Brief).

The King Declaration states that there has been a long-felt need “for a device that can be used to safely enclose and transport small pets and give them a chance [to] be exposed to the fresh air in a stroller, yet be simple to install and easy to assemble as well.” (King Declaration ¶ 3.) The George Declaration states the same (King Declaration ¶ 4).

In order to establish long-felt need, there need be objective evidence that an art-recognized problem existed for a long period of time without solution, that is, the evidence must show that the need was a persistent one and was recognized by those of ordinary skill in the art. *See In re Gershon*, 372 F.2d 535, 538-39 (CCPA 1967). The evidence should further establish that there were previous, unsuccessful attempts to meet that need.

Orthopedic Equipment Co. v. All Orthopedic Appliances, Inc., 707 F.2d

1376, 1382 (Fed. Cir. 1983). Moreover, the long-felt need must not have been satisfied by another before the invention by applicant. *Newell Companies Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988) (“[O]nce another supplied the key element, there was no long-felt need or, indeed, a problem to be solved.”)

In this case, Appellant has not presented evidence that there was a persistent need for a pet stroller recognized by the ordinary artisan. Nor is there any evidence that there were previous, unsuccessful attempts to meet that need. Moreover, Leader, Ludolph, and especially Baumsteiger, are evidence that pet strollers were known in the art. Thus, Appellant has not demonstrated that there was a long-felt need for the pet stroller as claimed.

As to commercial success, the King Declaration states that the “Kittywalk Pet Stroller[s] have enjoyed considerable commercial success since their inception” (King Declaration ¶ 5), and Kittywalk systems, the manufacturer of the Kittywalk Pet Stroller, “has made over 1 million in sales of the Kitty walk Pet Stroller” (King Declaration ¶ 6). The George Declaration states that the Declarant has “purchased over \$100,000 () worth” of the strollers in late 2005 (George Declaration ¶ 8).

There must be a nexus between the merits of the claimed invention and the evidence of secondary considerations, such as commercial success, if the evidence is to be given weight in the obviousness/nonobviousness determination. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 305 n.42 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986). The Federal Circuit has acknowledged that the applicant bears the burden of establishing the nexus, stating:

In the ex parte process of examining a patent application . . . the PTO lacks the means or resources to gather evidence which supports or refutes the applicant's assertion that the sale constitutes commercial success. *C.f. Ex parte Remark*, 15 USPQ2d 1498, 1503 (Bd. Pat. App. & Int. 1990) (evidentiary routine of shifting burdens in civil proceedings inappropriate in ex parte prosecution proceedings because examiner has no available means for adducing evidence). Consequently, the PTO must rely upon the applicant to provide hard evidence of commercial success.

In re Huang, 100 F.3d 135, 139-40 (Fed. Cir. 1996). Further, gross sales figures do not show commercial success absent evidence as to market share. *Id.* at 140 (“[E]vidence related solely to the number of units sold provides a very weak showing of commercial success, if any.”).

In this case, the King and George Declarations merely provide a gross sale number. Thus, Appellant did not provide the number of units sold, much less providing any evidence of the market share enjoyed by the Kittywalk stroller.

Moreover, we do not accord any weight to the award from CatFancy Magazine, nor the evidence of copying, in the obviousness analysis. First, as to the award, we do not know what criteria were used in granting the award, thus we do not know what, if any bearing, the award would have on the obviousness determination. Second, as to the evidence of copying, the arguments lack evidence upon which to weigh them, such as the level of skill of the one doing the copy or the nature of any discrepancies between the claimed invention and the copy.

Finally, given the strength of the showing of prima facie case of obviousness as to the independent claims, the evidence as to the secondary considerations of long-felt need, commercial success, and copying, is

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inadequate to overcome the conclusion that the independent claims are obvious over the cited prior art. *See Leapfrog Enterprises, Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

CONCLUSION

In summary, we conclude that the Examiner has set forth a prima facie case of obviousness as to all of the claims that has not been adequately rebutted by Appellant. The rejections on Appeal are therefore affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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